

Wage and Hour Division, Labor

§ 502.0

RECORD

§ 501.46 Retention of official record.

The official record of every completed administrative hearing provided by the regulations in this part shall be maintained and filed under the custody and control of the Chief ALJ, or, where the case has been the subject of administrative review, the ARB.

§ 501.47 Certification.

Upon receipt of a complaint seeking review of a decision issued pursuant to this part filed in a U.S. District Court, after the administrative remedies have been exhausted, the Chief ALJ or, where the case has been the subject of administrative review, the ARB shall promptly index, certify and file with the appropriate U.S. District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

PART 502—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT (SUSPENDED 6-29-2009)

Subpart A—General Provisions

- Sec.
- 502.0 Introduction.
- 502.1 Purpose and scope.
- 502.2 Coordination of intake between DOL agencies.
- 502.3 Discrimination prohibited.
- 502.4 Waiver of rights prohibited.
- 502.5 Investigation authority of Secretary.
- 502.6 Cooperation with DOL officials.
- 502.7 Accuracy of information, statements, data.
- 502.8 Surety bond.
- 502.10 Definitions.

Subpart B—Enforcement of Work Contracts

- 502.15 Enforcement.
- 502.16 Sanctions and Remedies—General.
- 502.17 Concurrent actions.
- 502.18 Representation of the Secretary.
- 502.19 Civil money penalty assessment.
- 502.20 Debarment and revocation.
- 502.21 Failure to cooperate with investigations.
- 502.22 Civil money penalties—payment and collection.

Subpart C—Administrative Proceedings

- 502.30 Applicability of procedures and rules.

PROCEDURES RELATING TO HEARING

- 502.31 Written notice of determination required.
- 502.32 Contents of notice.
- 502.33 Request for hearing.

RULES OF PRACTICE

- 502.34 General.
- 502.35 Commencement of proceeding.
- 502.36 Caption of proceeding.

REFERRAL FOR HEARING

- 502.37 Referral to Administrative Law Judge.
- 502.38 Notice of docketing.
- 502.39 Service upon attorneys for the Department of Labor—number of copies.

PROCEDURES BEFORE ADMINISTRATIVE LAW JUDGE

- 502.40 Consent findings and order.

POST-HEARING PROCEDURES

- 502.41 Decision and order of Administrative Law Judge.

REVIEW OF ADMINISTRATIVE LAW JUDGE'S DECISION

- 502.42 Procedures for initiating and undertaking review.
- 502.43 Responsibility of the Office of Administrative Law Judges.
- 502.44 Additional information, if required.
- 502.45 Final decision of the Administrative Review Board.

RECORD

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AUTHORITY: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

SOURCE: 73 FR 77229, Dec. 18, 2008, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 26008, May 29, 2009, part 501 was redesignated as part 502, and newly designated part 502 was suspended, effective June 29, 2009.

Subpart A—General Provisions

§ 502.0 Introduction.

These regulations cover the enforcement of all contractual obligation provisions applicable to the employment of H-2A workers under sec. 218 of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA).

These regulations are also applicable to the employment of United States (U.S.) workers newly hired by employers of H-2A workers in the same occupations as the H-2A workers during the period of time set forth in the labor certification approved by ETA as a condition for granting H-2A certification, including any extension thereof. Such U.S. workers hired by H-2A employers are hereafter referred to as engaged in corresponding employment.

§ 502.1 Purpose and scope.

(a) *Statutory standard.* Section 218(a) of the INA provides that:

(1) A petition to import an alien as an H-2A worker (as defined in the INA) may not be approved by the Secretary of the Department of Homeland Security (DHS) unless the petitioner has applied to the Secretary of the United States Department of Labor (Secretary) for a certification that:

(i) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(ii) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

(2) [Reserved]

(b) *Role of the Employment and Training Administration (ETA).* The issuance and denial of labor certification under sec. 218 of the INA has been delegated by the Secretary to ETA, an agency within the U.S. Department of Labor (the Department or DOL). In general, matters concerning the obligations of an employer of H-2A workers related to the labor certification process are administered and enforced by ETA. Included within ETA's jurisdiction are issues such as whether U.S. workers are available, whether adequate recruitment has been conducted, whether there is a strike or lockout, the methodology for establishing AEWR, whether workers' compensation insurance has been provided, whether employment was offered to U.S. workers as required by sec. 218 of the INA and regulations at 20 CFR part 655, subpart B, and other similar matters. The regula-

tions pertaining to the issuance and denial of labor certification for temporary alien workers by the ETA are found in 20 CFR part 655, subpart B.

(c) *Role of the Employment Standards Administration (ESA), Wage and Hour Division (WHD).* (1) The Secretary is authorized to take actions that assure compliance with the terms and conditions of employment under sec. 218 of the INA, the regulations at 20 CFR part 655, subpart B, or these regulations, including the assessment of civil money penalties and seeking injunctive relief and specific performance of contractual obligations. *See* 8 U.S.C. 1188(g)(2).

(2) Certain investigatory, inspection, and law enforcement functions to carry out the provisions of sec. 218 of the INA have been delegated by the Secretary to the ESA, WHD. In general, matters concerning the obligations under a work contract between an employer of H-2A workers and the H-2A workers and U.S. workers hired in corresponding employment by H-2A employers are enforced by ESA, including whether employment was offered to U.S. workers as required under sec. 218 of the INA or 20 CFR part 655, subpart B, or whether U.S. workers were laid off or displaced in violation of program requirements. Included within the enforcement responsibility of WHD are such matters as the payment of required wages, transportation, meals, and housing provided during the employment. The WHD has the responsibility to carry out investigations, inspections, and law enforcement functions and in appropriate instances impose penalties, recommend revocation of existing certification(s) or debarment from future certifications, and seek injunctive relief and specific performance of contractual obligations, including recovery of unpaid wages (either directly from the employer or in the case of an H-2A Labor Contractors (H-2ALC), from the H-2ALC directly and/or from the insurer who issued the surety bond to the H-2ALC as required by 20 CFR part 655, subpart B and 29 CFR 501.8).

(d) *Effect of regulations.* The amendments to the INA made by Title III of the IRCA apply to petitions and applications filed on and after June 1, 1987.